



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

REHEARING DECISION
Case #: BCS - 175380

PRELIMINARY RECITALS

Pursuant to a petition filed on July 5, 2016, under Wis. Stat. § 49.45(5)(a), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on August 9, 2016, by telephone.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On February 1, 2016, the respondent closed petitioner's MA case due to failure to provide requested verification.
3. Petitioner had numerous telephone contacts with the respondent following the February discontinuation notice with regard to the requested verifications.
4. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on July 5, 2016.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA must be filed within **45** days of the date of the action. Wisconsin Stat. § 49.45(5); Income Maintenance Manual § 3.3.1. A negative action can be the denial of an application or the reduction or termination of an ongoing case. The petitioner's appeal was filed 155 days after the date of the action. Thus, it was untimely, and no jurisdiction exists for considering the merits of the case.

The petitioner and her husband asserted that they delayed filing an appeal because they were in regular contact with the respondent regarding the necessary verifications. In any event, the only theory that this Judge could concoct to make this appeal timely would be to conclude that the running of the 45-day period was tolled by an act of active misleading by the agency—*i.e.*, a conversation occurred in which the agency actively misled the petitioner by telling her not to file a written appeal with this office. Because there is absolutely no evidence that such a conversation occurred, it was impossible for the agency to have actively misled the petitioner as to the filing requirements.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 22nd day of August, 2016

\s _____
Peter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 22, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability